ATTORNEY FOR APPELLANT:

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IN THE
COURT OF APPEALS OF INDIANA

ROGER EDWARDS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 53A01-0604-CV-159
	)	
BLOOMINGTON PARKING MANAGEMENT, LLC,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Jeffrey A. Chalfant, Judge
Cause No. 53C08-0601-SC-641

January 18, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Roger Edwards ("Edwards") appeals a small claims judgment against him upon the complaint of Appellee-Plaintiff Bloomington Parking Management, LLC ("Bloomington Parking") for towing charges. We reverse.

Issue

Edwards presents a single, restated issue for review: whether the evidence is sufficient to support the judgment against him.

Facts and Procedural History

Because the small claims hearing was not recorded and no transcript of evidence was available, the trial court certified a Statement of the Evidence, upon Edwards' motion, pursuant to Indiana Appellate Rule 31.[1] The Statement of the Evidence provides:

> Defendant's son, David Edwards was using Defendant's Nissan pickup truck one evening and the early morning hours of the following day in early January, 2006, with Defendant's permission. David received a call from a friend who was at a party at Varsity Villas who needed a ride. David drove to Varsity Villas and entered the apartment complex. It was already past midnight and there were many empty parking spaces in the complex. "No Parking" signs were posted. David parked near the apartment where the party was located and ran inside to get his friend. David was only outside the vehicle for 10 to 15 minutes. There was no sign of the police and no evidence presented at trial that any member of the Bloomington Police Department was involved in the incident, either personally or via telephone. When David came out of the apartment, he saw the Plaintiff's agent towing the truck away. Defendant and his son could not locate the truck until late the next morning. When he went to retrieve the truck, Defendant was told the towing and storage fee came to $80. He refused to pay and left. Defendant received a "Promise to Appear Notice" form along with the notice of small claims.

[1] Indiana Appellate Rule 31 provides in pertinent part: "If no Transcript of all or part of the evidence is available, a party or the party's attorney may prepare a verified statement of the evidence from the best available sources, which may include the party's or the attorney's recollection. The party shall then file a motion to certify the statement of evidence with the trial court or Administrative Agency. The statement of evidence shall be attached to the motion."

(Appellate Ex. 1) On January 30, 2006, Bloomington Parking filed a Notice of Small Claim against Edwards seeking to recover $130.00 and costs. The trial court conducted a hearing on February 21, 2006, and awarded Bloomington Parking a judgment of $130.00 plus costs. Edwards now appeals.

Discussion and Decision

Edwards contends that Bloomington Parking lacked authority to tow his vehicle and charge him for the towing.

Bloomington Parking did not file a brief in this appeal. Where the appellee fails to file a brief, it is within our discretion to reverse the trial court's decision if the appellant makes a prima facie showing of reversible error. Phegley v. Phegley, 629 N.E.2d 280, 282 (Ind. Ct. App. 1994), trans. denied. Prima facie error is error at first sight, on first appearance, or on the face of it. United Consulting Engineers v. Board of Com'rs of Hancock County, 810 N.E.2d 351, 354 (Ind. Ct. App. 2004). Accordingly, this Court will not undertake the burden of developing arguments in favor of the appellee. Id.

Indiana Small Claims Rule 8(A) provides: "The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence except provisions relating to privileged communications and offers of compromise." Nevertheless, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues. LTL Truck Service, LLC v. Safeguard, Inc., 817 N.E.2d 664, 668 (Ind. Ct. App. 2004). Although "the method of proof may be informal, the relaxation of evidentiary rules is not the equivalent of

relaxation of the burden of proof." Id. Thus, it remains incumbent upon the party who bears the burden of proof to demonstrate that it is entitled to the recovery sought. Id.

The burden of proof with respect to damages is with the plaintiff. Id. (citing Noble Roman's, Inc. v. Ward, 760 N.E.2d 1132, 1140 (Ind. Ct. App. 2002)). Moreover, a fact finder may not award damages on the mere basis of conjecture or speculation. Id.

Here, Bloomington Parking had the burden of proof to establish why Edwards was required to pay for the towing of his vehicle. From the record before us, which Bloomington Parking has chosen not to challenge or supplement, we cannot ascertain whether the vehicle was removed from public or private property. Nor can we ascertain whether the towing was at the instance of a Varsity Villas owner, manager, or resident, a law enforcement officer, or an unknown individual. It may be that the towing was performed upon the tow truck driver's own initiative. Nevertheless, we cannot determine what ordinance or law, if any, would be applicable.

As previously observed, we will not develop arguments for an appellee that has elected not to file an appellee's brief. United Consulting Engineers, 810 N.E.2d at 354. Furthermore, speculation or conjecture does not constitute sufficient evidence to support an award of damages. Noble Romans, Inc., 760 N.E.2d at 1140. The judgment of $130.00 must be reversed due to a lack of sufficient evidence of record to support the damages award.

Reversed.

VAIDIK, J., and BARNES, J., concur.